IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2572 of 2006
To
FIRST APPEAL No. 2574 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPECIAL LAQ OFFICER - Appellant(s)
Versus
MADHAVSINH GARMARSINH ZHALA & 1 - Defendant(s)

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Appearance :
MR UR BHATT, AGP for Appellant(s) : 1,
MR ANUP S PARASRAMPURIA with MR AJ PATEL for Respondent(s) : 1,
None for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 11/01/2007

ORAL JUDGMENT

The Special Land Acquisition Officer, Narmada Project, Unit

No. 10, Ahmedabad has preferred these appeals under section 54 of the Land Acquisition Act, 1894 [hereinafter referred to as 'the Act'] to challenge the judgment and award made by the 4th Extra Assistant Judge and Special Judge [L.A.Q.] Ahmedabad [Rural] at Ahmedabad dated 5/7/2004 in Land Acquisition Case Nos. 714/1998, 715/1998 and 716/1998. The learned Judge has awarded Rs.19=30 ps., per sq. mtr., over and above the compensation awarded by the Special Land Acquisition Officer i.e., Rs.00-78 ps., per sq.mtr. Since these appeals arise from the common judgment and award, they are heard together and now they are being disposed of by this common judgment.

2. The lands in question are agricultural lands, which are situated at village Gunjala in Taluka Detroj [formerly in Viramgam Taluka] Dist. Ahmedabad. The lands were required for constructing branch canal of Narmada Project at Kharaghoda. Hence, necessary proceedings under the Act were initiated. Notification under section 4 of the Act was published on 23/10/1992 and declaration under section 6 of the Act was published on 19/6/1993. After complying with all the necessary formalities, the appellant made award dated 29/1/1996. He determined the market value of the land under acquisition at Rs.00-78 paise per sq.mtr.

2.1. Since the respondents were not satisfied with the compensation awarded by the appellant, they made applications under section 18 of the Act to

the Collector for making reference to the Civil Court for enhancement of the compensation, which ultimately culminated into the aforesaid reference cases. Case of the respondents was that their lands were irrigated lands and it yielded good agricultural produce. Their village, namely, Gunjala had many facilities such as cooperative society, milk producers' society, electricity, water and roads. According to them, they deserved to have just compensation, namely Rs.20/- per sq.mtr. They also averred that lands in the vicinity which were acquired for the same purpose, namely construction of branch canal, were subject matter of the award of the Court wherein Rs.20/- was determined as the market value and the compensation was awarded on the same basis. The claims were resisted by the appellant by filing written statement at Exh. 11, wherein it was averred that the market value determined by the Special Land Acquisition Officer was just and proper and the respondents did not deserve any enhancement in the compensation.

2.2. Before the Reference Court, the parties led evidence both oral as well as documentary. Madhavsinh Garmarsinh Zala gave evidence at Exh. 23. He gave evidence on behalf of all the claimants. As against that, Mr. Jagdish Jayaprasad Gupta gave evidence at Exh. 31 on behalf of the appellant. The respondents also produced documentary evidence including award made by the very Court in L.A. Case No. 2477/1996 at Exh. 55, which is in respect of lands situated at village Kachrol.

2.3. The Ld. Judge, on the basis of the material produced before it, allowed the reference cases and enhanced the compensation by Rs.19-30 ps., per sq.mtr. Over and above the compensation granted by the appellant. In-all the Court granted Rs.20=08 ps., per sq. mtr., against the claim of Rs.20/- per sq.mtr., made by the respondents. Hence these appeals.

3. I have heard Mr. Uday Bhatt, Ld. AGP for the appellant and Mr. Parasrampuriya, learned advocate for Mr. AJ Patel for the respondents. It is submitted by Mr. Bhatt that inspite of the fact that there are several sale instances available, the Reference Court did not rely on the same but placed reliance on the award made by the Court. He has submitted that when the sale instances are available, the Civil Court should first rely on the sale instances and only in absence of such evidence, it may take into consideration the award or the evidence with regard to yield. He has submitted that the matter deserves remand with a direction to the Civil Court to take into consideration the relevant sale instances.

3.1. As against that, Mr. Parasrampuria has submitted that the Ld. Judge has rightly relied on the award of the Court. He has submitted that the award at Exh. 55 pertains to land at village Kachrol, which is very near to village Gunjala. Hence, the Court was justified in taking it into consideration

for determining the correct market value. In support of his submission he has placed reliance on two decisions of the Apex Court.

4. Having heard Mr. Bhatt, Ld. AGP for the appellant and Mr. Parasrampuria, Ld. Advocate for the respondents and having perused the record and proceedings of the case, it appears that the question to be decided is whether the market value determined by the Civil Court is just and proper. The lands are acquired for construction of branch canal at village Kharaghoda. The appellant awarded a sum of Rs.00-78 ps., per sq.mtr. Naturally, therefore, the respondents made applications under section 18 of the Act for enhancing of the compensation. Before the Civil Court the respondents produced material in the form of deposition of Madhavsinh Garmarsinh Zala and certain documents. Mr. Zala has deposed that the lands were irrigated lands and they created facilities for irrigation by drilling bores. He has further stated tat in all the three seasons they used to obtain different crops. Their net income was Rs.35,000/- to Rs.40,000/-. He has further stated that village Kachrol is situated at a distance of three quarters of the Kilometer from their village. According to him, the branch canal of Narmada flows through their village and from there it goes to Kanpura and then to Kachrol. He has also stated that the quality of land of village Kachrol and that of village Gunjala is the same. In support of his say, he has also produced certain documentary evidence. This witness has further stated that lands situated at village Bantai and Nandishala are of the same

quality. According to him, Rs.20/- per sq.mtr., is the correct market value of the lands in question. He has stated that the lands situated at village Bantai , Nandishala, Kachrol and Gunjala yield similar crops and all these lands are very fertile and irrigated. In the cross-examination he has denied that they obtained only one time crop and they do not have any facility of irrigation. He has specifically stated that they drilled bores and obtained water in partnership. He has denied the suggestion that village Kachrol is at a distance of 8 Kms from village Gunajala. He has also denied the suggestion that the lands of Gunjala are of inferior quality than the lands at village Kachrol.

4.1. So far as the appellant is concerned, Jagdishbhai Jayaprasad Gupta, who on the date of deposition discharged duty in Division No. IV/V in Bechraji Sub Division, gave evidence at Exh. 31. He has stated that most of the land of village Gunjala was non-irrigated and there was no facility of irrigation. According to him, only the crops of Bajri, Juvar and pulses were grown in these lands. However, in the cross-examination he has stated that the lands in village Gunjala are irrigated lands. He has further stated that the similar crops were grown in village Kachrol and village Gunjala. The respondents have also placed reliance on the award made by the 3rd Extra Assistant Judge and Special Judge [L.A.R.] Ahmedabad [Rural] in L.A. Case No. 2477/1996 and its allied matters. The said award is at Exh. 55. In the said case, lands at village Kachrol were under acquisition and they were actually acquired. The Civil Court in the

said cases delivered judgment on 26/4/2002 and awarded a sum of Rs.18-95 paise per sq.mtr. As an additional compensation over and above the compensation granted by the Special Land Acquisition Officer. It is the case of respondents that when there is Court's award for lands of adjoining village, it can serve as a good example for comparison for ultimate award of compensation.

5. I have perused the contents of Exh. 55. The lands in the said case have also been acquired for construction of Narmada Canal Project. In the said case, total amount of Rs.20/- per sq.mtr., has been awarded by the Court. In doing so, the Reference Court relied on the award made in respect of land situated at village Nandishala. According to the Reference Court, since the land at Nandishala, village Kachrol and village Gunjala were of similar nature, the award at Exh. 55 can safely be relied upon for determining the correct value of the lands in question. On the basis of the same, the Court awarded Rs.19-30 ps per sq.mtr., over and above the award of Rs.00-78 ps. It may be noted here that so far as the sale instances which have been referred to by Mr. Bhatt are concerned, they are not produced on record. Moreover, even according to the witness of the appellant, the lands in question were irrigated land and they were very much similar to the land of Kachrol. According to Madhavsinh – witness of respondents, the distance between Gunjala and Kachrol is three quarters of the Kilometer. It also appears from the record that there are no sale instances on

record though the reference has been made in the written statement. In view of the same, in my opinion, the Reference Court was justified in relying upon the award made in respect of land at Kachrol. As stated above, villages Nandishala, Bantai, Kachrol and Gunjala are in the vicinity of each other. In the decision rendered by the Apex Court in the case of Om Prakash [dead] by Lrs. v/s. Union of India reported in (2004) 10 S.C.C. 627, the Apex Court has held as under :-

> "7. The only question argued before us was the assessment of the market value of the acquired lands as on the date of the notification under Section 4 of the Act. No other issue was canvassed. The High Court has correctly found that the topography, potentiality and advantages attached to and available to the lands in the five adjoining villages, namely, Bhorgarh, Kureni, Mamurpur, Narela and Tikri Khurd were almost the same on the date when the notification under Section 4 was issued. It also referred to the fact that in its judgment in Dharambir v. Union of India the market value of the land had been assessed at Rs.25,000 per bigha as against the assessment made by the Reference Court @ Rs.17,500 per bigha. An appeal therefrom was carried to this Court and is the subject matter of the decision of this Court in Union of India v. Dharambir. While allowing the appeal of the State Government, this Court held that Rs.16,750 per bigha was the fair market value of all categories of land situate at village Mamurpur as on the date of the notification under Section 4 of the Act i.e., on 30/10/1963."

In another decision which is rendered in the case of Union of India v. Harinder Pal Singh reported in (2005) 12 S.C.C. 564 the Apex Court has

held that in absence of any contemporaneous document, the market value of acquired lands can be determined on the basis of the market value of the lands of the adjoining villages. Thus, when there is no sale instances on record, the Court was justified on placing reliance on the award made by the Court in respect of land at village Kachrol. Even according to the witness of the appellant, the lands of Kachrol and Gunjala were very similar and with facility of irrigation. The lands of Kachrol village were acquired around the same time and for the very purpose, namely construction of branch canal of Narmada. Hence, I do not see any error having been committed by the Reference Court in placing reliance upon it. Therefore, the submission of Mr. Bhatt cannot be accepted. However, it appears that the Reference Court has committed little error which is required to be rectified. The appellant awarded Rs.00-78 ps per sq.mtr. The Reference Court has granted additional compensation of Rs.19-30 ps per sq. mtr. That would exceed the claim of the respondents i.e., Rs.20/- per sq.mtr., by Rs.00-08 paise per sq.mtr. Hence, Rs.00-08 paise per sq.mtr., is required to be reduced from the award of the Reference Court and it is hereby ordered to be reduced. In other words, the respondents will be entitled to receive additional compensation of Rs.19-22 paise per sq.mtr. Hence these appeals are partly allowed to the aforesaid extent with no order as to costs.

[Akshay H Mehta, J.]

* Pansala.